

OCT 19 1999**FCC MAP ROOM**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Application by New York Telephone)
Company (d/b/a Bell Atlantic – New York),) CC Docket No. 99-295
Bell Atlantic Communications, Inc., NYNEX Long)
Distance Company, and Bell Atlantic Global)
Networks, Inc. (collectively, “Bell Atlantic”))
For Authorization to Provide In-Region)
InterLATA Services in New York)

COMMENTS OF
CHOICE ONE COMMUNICATIONS, INC.
IN OPPOSITION OF
BELL ATLANTIC’S SECTION 271
APPLICATION – NEW YORK

By: Kim Robert Scovill, Esq.
Vice President, Legal and Regulatory
Affairs and General Counsel
Terry J. Romine, Esq.
Director, Regulatory Affairs and Associate
General Counsel
Choice One Communications, Inc.
100 Chestnut Street, Suite 700
Rochester, NY 14534
Tel: (716) 530-2781
Fax: (716) 530-2734

Dated: October 18, 1999

TABLE OF CONTENTS

SUMMARY	ii
I. Introduction	2
II. Discussion	3
A. Bell Atlantic's Hot Cut Performance	3
B. Bell Atlantic's Directory Listings	6
C. Bell Atlantic's Delays in Constructing Entrance Facilities	8
D. Bell Atlantic's Collocation Tariffs	9
E. Bell Atlantic's OSS Obligations	10
F. The Public Interest Standard	11
III. Conclusion	14

SUMMARY OF COMMENTS

Choice One Communications, Inc. (“Choice One”) believes that Bell Atlantic has made laudable efforts to meet the Section 271 Checklist and to open the markets in the State of New York to local competition. Choice One was an active participant in the New York Public Service Commission proceeding that examined Bell Atlantic’s Compliance with Section 271. In its pleadings and testimony in the proceeding, Choice One did not deny that Bell Atlantic has met the checklist standards in a number of areas nor does it dispute Bell Atlantic’s assertions in its Application in this proceeding as to certain of the checklist items. Nevertheless, there are at least three checklist items that Bell Atlantic has not met and that must be perfected to ensure that local competition develops and become irreversibly open.

Choice One asserts that Bell Atlantic has failed to provide (1) non-discriminatory access to unbundled loops; (2) non-discriminatory local loop transmission and local transport; and (3) non-discriminatory white pages directory listings on a commercially reasonable level of quality. Choice One is concerned that if Bell Atlantic were to be granted in-region long distance service authority, Bell Atlantic would lose its incentive to continue to work with competitive local exchange carriers (“CLECs”) to resolve the issues of access to unbundled loops and local loop transmission on local transport, and non-discriminatory directory listings.

Choice One also suggests that the FCC adopt an expedited complaint procedure to permit a CLEC to adjudicate a 271-related matter that relates to Bell Atlantic’s performance and has resulted in damage to the CLEC or its customer. Choice One does not believe that the Performance Assurance Plan is sufficient to prevent backsliding by Bell Atlantic once its Section 271 application is granted.

Commenter: Choice One Communications
Applicant: Bell Atlantic
271 Application -
New York

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by New York Telephone)	
Company (d/b/a Bell Atlantic – New York),)	CC Docket No. 99-295
Bell Atlantic Communications, Inc., NYNEX)	
Long Distance Company, and Bell Atlantic)	
Global Networks, Inc. (collectively, “Bell)	
Atlantic”), for Authorization to Provide)	
In-Region, InterLATA Services in New York)	
(“Section 271 Application”))	

To: The Commission

COMMENTS OF
CHOICE ONE COMMUNICATIONS
IN OPPOSITION OF
BELL ATLANTIC’S SECTION 271
APPLICATION – NEW YORK

Choice One Communications, Inc. (“Choice One” or “Company”), pursuant to the Public Notice issued September 29, 1999 by the Federal Communications Commission (“FCC” or “Commission”) in the above-styled proceeding, respectfully submits its comments in opposition to the grant of the Bell Atlantic Section 271 application by the FCC.

Choice One is eager to assign credit where due, and Bell Atlantic must be commended for making substantial progress in complying with Section 271. There is no doubt that markets are more open to competition now than they were a year, or even six months ago. Choice One acknowledges the efforts of many dedicated individuals at Bell Atlantic that made this happen, and applauds the progress Bell Atlantic has shown to usher in local competition to New York markets.

Nevertheless, for the reasons noted herein, the markets in New York are not yet truly open to local competition, and Bell Atlantic has not completely met the Section 271 standards to permit it the reward of being permitted long distance market entry. While Choice One does not expect perfection before Section 271 entrance is granted, it is concerned that a premature grant of the application may distract Bell Atlantic from continuing to cooperate in permitting competitive local exchange carriers (“CLECs”) nondiscriminatory access to necessary elements of the Bell Atlantic network on a commercially reasonable level of quality. In support of its position, Choice One provides the following information:

I. Introduction

Choice One Communications, Inc. was founded in June 1998 in New York to provide competitive telecommunications services within the Bell Atlantic Region. Currently, it provides, through its New York operating subsidiary, commercial local exchange and interexchange services in Albany, Buffalo, and Syracuse, New York (other current or pending markets include; Pittsburgh, Pennsylvania; Providence, Rhode Island; Manchester, New Hampshire; and Worcester and Springfield, Massachusetts). All our markets to date are within the local exchange service areas of Bell Atlantic, or its affiliates. Accordingly, Choice One has extensive experience with obtaining services from Bell Atlantic.

As noted earlier, Choice One freely acknowledges that Bell Atlantic has made meaningful progress toward Section 271 compliance. However, that compliance often belies the fact that Choice One must frequently escalate issues to Bell Atlantic management before compliance is achieved.¹ The requirement that daily involvement of management in both companies

¹ Choice One’s testimony during the New York Public Service Commission’s hearings demonstrated that 50% of orders to Bell Atlantic often required management intervention prior to completion.

demonstrates that economically sustainable competitive process are not currently in place. The areas of most concern to Choice One involve (1) hot cut procedures; (2) collocation issues (including entrance facilities); and (3) listings of customers in Bell Atlantic's directories. Consequently, Choice One submits that Bell Atlantic has failed to provide nondiscriminatory access to unbundled local loops (47 U.S.C. § 271(c) (2) (B) (ii)), local loop transmission (47 U.S.C. § 271 (c) (2) (B) (iv)), local transport (47 U.S.C. § 271 (c) (2) (B) (v)), and white pages directory listings (47 U.S.C. § 271 (c) (2) (B) (viii)).

Moreover, Choice One asserts that the Bell Atlantic Performance Assurance Plan may not be effective to ensure that Bell Atlantic continues to cooperate and continue to open the markets in New York to local competition. The penalties imposed, which are de minimus relative to the revenues of BA, are based on an aggregate evaluation. The aggrieved CLEC has no avenue to obtain timely and adequate relief from Bell Atlantic's anti-competitive practices. In the aggregate, Bell Atlantic may provide a 98% performance standard which, taken alone, appears sufficient to support local competition. However, for a start-up CLEC with a handful of customers, a 2% failure may effect the majority of the customers and cause the CLEC to be adversely harmed. An additional assurance performance penalty should be imposed to permit the individual, adversely affected CLEC to make a complaint and be compensated should Bell Atlantic's omissions or actions result in apparent harm to the CLEC's business (ex., loss of the customer).

II. Discussion

A. Bell Atlantic's Hot Cut Performance

Section 271 (c) (2) (B) (iv) of the Act requires a Section 271 applicant to provide or offer to provide access to "[l]ocal loop transmission from the central office to the customer's premises,

unbundled from local switching or other services.” To satisfy the nondiscrimination requirement under checklist item (iv), a BOC must demonstrate that it can efficiently furnish unbundled loops to competing carriers within a reasonable timeframe, with a minimum of service disruption, and at the same level of service quality. Bell Atlantic argues that it has met the requirements of Checklist Item 2, which requires Bell Atlantic to provide access and interconnection to the local loop transmission facility. Specifically, Bell Atlantic described its hot cut performance² as “excellent.” See Application at 22 – 23. Bell Atlantic contends that implementation of revised hot cut procedures in accordance with New York Public Service Commission (NY PSC) supervision have resulted in Bell Atlantic being able to perform 97% of its hot cut orders “on time and as requested.” See Application at 23. In addition to its internal evaluations, it cites KPMG test results indicating that for a period, Bell Atlantic followed its hot cut procedures 97% of the time, and the delays or errors by the CLEC were the cause of 86% of order rescheduling. See id. Bell Atlantic states that any interruptions to service over 5 minutes (the NY PSC’s goal) was attributable to Bell Atlantic error only 11% of the time.

Choice One experience with Bell Atlantic hot cut procedures reflects a less than satisfactory results and certainly not within the realm that Bell Atlantic asserts. Between February and April 1999, Bell Atlantic failed to provision properly 21 out of 43 loop orders for Choice One. The failure to timely provision loops is an ongoing issue that Choice One and Bell Atlantic are pursuing. Choice One has been required to involve senior management to escalate the issues and to obtain Bell Atlantic cooperation in ensuring that its personnel are properly trained and follow the hot cut procedures.

² “Hot cut” means disconnecting loops from Bell Atlantic switches and reconnecting them to a CLEC switch, while at the same time updating the database to direct the calls to the CLECs switch.

Choice One experience supports the KPMG Exception 54 that states that Bell Atlantic failed to “consistently follow the established ‘Hot Cut’ coordination procedures as outlined in the Regional CLEC Coordination Center’s (RCCC) ‘RCCC Two Wire Analog Loop-RCCC North’ document.” Furthermore, KPMG noted in cross-reference P12-3, (in the comments section) that the coordinated hot cut provisioning procedures were not consistently or reliably practiced in the field.

Bell Atlantic reports that KPMG recorded a 97% success rate at following the proper steps, but that percentage is misleading. Bell Atlantic counts early cutovers as “on time,” even if premature cuts result in disruption of service to the customer. Reporting early cutovers as “on time” distorts the picture of Bell Atlantic’s performance because unless the loop cutover is coordinated with the porting of the number, CLEC customers are left without telephone service. Additionally, when such premature cutovers occur, Bell Atlantic procedures frustrate a CLECs or it customer’s efforts to resume telephone service. The customer tends to blame the CLEC rather than Bell Atlantic. Thus, Bell Atlantic has no incentive to “fix” the problem because it is beneficial to retain the customer because of the perception that the CLEC is “unreliable.”

Finally, Bell Atlantic blames the CLEC errors for what are really scheduling errors attributable to Bell Atlantic. Bell Atlantic states that a “majority” of allegedly faulty hot cuts result from causes outside Bell Atlantic’s control. See application at 23 n. 19. However, Bell Atlantic does not support this claim with evidence. It has been Choice One’s experience that it may reschedule “hot cuts” based on the request of the customer and Bell Atlantic acknowledges the modification to the order. However, in many cases, Bell Atlantic fails to issue the necessary paperwork to its technicians, and the cut occurs on the incorrect date.

For example, Choice One has a customer whose service order was modified to change the cutover date at the request of the customer. The customer was subjected to a service outage on each of the “cancelled” service dates (sometimes it can take as long as 24-hours to get a customer’s service restored). In discussion with the technician in an effort to have the customer reconnected until the “real” cutover date, the technician noted that he had paperwork to “disconnect” the customer at least one more time prior to the cutover date. The customer’s perception is that the CLEC is inexperienced and is the cause of the service disruption. Thus, Bell Atlantic’s inability, on a commercial viable basis, to provision the unbundled loop through consistent hot cut procedures has a chilling effect on local competition.

Additionally, the recent decision of the FCC requiring access by the BOCs to sub-loops and inside wiring have not been implemented by Bell Atlantic and must be taken into consideration in determining whether Bell Atlantic is providing timely, nondiscriminatory access.

Choice One, therefore, submits that Bell Atlantic has not demonstrated that it adequately provides nondiscriminatory access to unbundled loops. Choice One acknowledges that the Bell Atlantic is progressing toward meeting such requirement, but it has not satisfactorily met the requirements at this time. Choice One encourages the FCC to reject the Section 271 application until Bell Atlantic consistently adheres to its hot cut procedures, is willing to accept responsibility for its errors, and that all errors resulting in an “out of service” condition for any customer be addressed immediately. Otherwise Bell Atlantic’s actions are anti-competitive and will delay effective competition by CLECs in the New York markets.

B. Bell Atlantic's Directory Listings

Section 271(c)(2)(B)(viii) states that access or interconnection provided or generally offered by the BOCs must include: "White [P]ages directory listings for customers of other carriers' telephone exchange service." This checklist item ensures that white page listing for customers of different carriers are comparable, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider.

Bell Atlantic characterizes competing carriers' use of Bell Atlantic's White Pages directory as extensive. It states that it has procedures in place to allow CLECs to preview their customer data and to prevent dropped data when a customer switches service from Bell Atlantic to a competing carrier. Bell Atlantic also claims that any problems with dropped customer data resulting from a change to a competing carrier have been successfully adjusted and approved by KPMG.

Again, Bell Atlantic's claims and Choice One's experiences are contrary. Choice One has an on-going issue with Bell Atlantic on the dropping of customer data from the directory assistance listings. In the past several weeks, Choice One has had at least one complaint from its customers that third parties seeking the customer's number is informed by Bell Atlantic's Directory Assistance that no listing exists. The most recent case involved an insurance company that depends on the ability of parties to obtain its telephone number through directory assistance. Several of the insurance company's clients or potential client indicated that they were unable to obtain the company's listing through directory assistance. The insurance company is concerned that its business has been adversely affected by the lack of listing. Again, the customer perceives

the CLEC to be at fault and not Bell Atlantic, and is asking for compensation for the lack of service and the business loss.

Choice One has brought the issue to Bell Atlantic's attention on a continuing basis. Bell Atlantic has been unable to explain the reason for the loss of Choice One's customer's listings and has been unable to institute a procedure to prevent the problem from continuing to occur. Thus, Choice One takes issue with Bell Atlantic's claim that it has successfully adjusted its procedures to prevent the dropped customer data from occurring. The problem has not been resolved, continues to occur, and perpetuates a misperception that changing to CLEC service results in service quality less than Bell Atlantic, even though Bell Atlantic is the cause of the problem.

Service disruptions (from premature hot cuts) and directory listings are the biggest issues that Choice One faces in retaining customers. Bell Atlantic's failure to consistently perform its obligations to abide by its procedures, or to have a process in place, to provision these services are anti-competitive and will continue to chill local competition. If Bell Atlantic is granted long distance service authority, it will have no incentive to continue to work with the CLECs to resolve the problems. As discussed herein, the Performance Assurance Plan does not provide sufficient incentive to Bell Atlantic to work towards the resolution of the issues nor to work with individual CLECs to resolve the problems.

Furthermore, when these problems occur, the CLEC must utilize its senior management to focus Bell Atlantic as to the seriousness of the issues. The responsiveness to CLECs by the Bell Atlantic staff that is to be performing the procedures reflects a lack of interest by Bell Atlantic to properly train its staff to ensure that local competition will develop.

C. Bell Atlantic's Delay in Constructing Entrance Facilities.

Section 271 (c) (2) (B) (v) of the Act requires a BOC applicant to provide “[l]ocal transport from the trunk side of a wireline exchange carrier switch unbundled from switching or other services.” This checklist item requires a BOC to provided requesting carriers with transmission links that are dedicated to the use of the requesting carrier as well as links that are shared with other carriers, including the BOC. Nondiscriminatory access to transport ensures that consumer calls traveling over competing carriers are completed properly.

Transport is an unbundled network element that must be provided on a nondiscriminatory basis pursuant to section 251 (c) (3). Transport can either be dedicated to a particular carrier or shared by multiple carriers including the incumbent LEC. The BOC must provide transport to a competing carrier under terms and conditions that are equal to the terms and conditions under which the incumbent LEC provisions such elements to itself. Bell Atlantic claims that it meets competing carriers’ orders for dedicated transport faster than it does itself. It also claims that it is adding new interoffice facilities capable of meeting competing carrier’s transport demand on a “massive” scale.

Choice One connects its collocation arrangement to its switch by purchasing interoffice facilities and entrance facilities from Bell Atlantic. Bell Atlantic, on a consistent basis, has not been able to install entrance facilities for Choice One in a timely manner. Bell Atlantic’s interval for installing entrance facilities has ranged between 98 and 109 days. Choice One has been unable to use its collocation arrangements for several week after the collocation ready date because of Bell Atlantic’s failure to install the entrance facilities on time.

The local exchange markets in New York will not be irreversibly open until CLECs can depend upon Bell Atlantic to provision entrance facilities, as well as other facilities needed to make collocation arrangements operational, in a timely and reliable manner. Choice One submits that Bell Atlantic has not satisfied Checklist Item 5 because of its inability to provide entrance facilities which are critical to a CLECs provision of local exchange service.

D. Bell Atlantic's Collocation Tariffs

Bell Atlantic argues that it provides interconnection that complies with Item 1 of the Section 271 Competitive Checklist, citing the deployment of 776 CLEC collocation sites serving 85% of Bell Atlantic's access lines in New York. See Application at 10, 16. Bell Atlantic cites its provision of physical collocation arrangements in standard, shared, mini-cage and cageless varieties such as assembly rooms and assembly points, as well as off-site and virtual collocation options. See Application at 16-17, 33. In addition, Bell Atlantic argues that its "extraordinary" efforts have made collocation space available in 210 of the 213 offices where CLECs have requested it, and that such collocation has been provided in a timely manner. See Application at 17, 18. Moreover, Bell Atlantic contends that its "cageless" collocation tariff (amended most recently the week of September 20) complies with the FCC's Collocation Order and states that it provides each of the collocation offerings required by the Collocation Order. See Application at 17.

Bell Atlantic represented throughout the course of the New York Section 271 proceeding that it would demonstrate compliance with the requirements of the Commission's proceeding, but to date it is not clear that Bell Atlantic's tariff is in compliance. For example, in Section 5.8.2(E) of Bell Atlantic's New York P.S.C. 914 Tariff states that Bell Atlantic reserves the right to enclose, or otherwise separate its equipment from CLEC equipment. Such a provision is

unlawful in light of the Collocations Order's prohibition of requirements that require "competitors to collocate in a room or isolated space separate from the incumbent's own equipment."

E. Bell Atlantic's Operational Support Systems ("OSS") Obligations

Bell Atlantic argues that each element of its OSS is fully operational and capable of handling large commercial volumes. Bell Atlantic contends that its pre-ordering and ordering systems generally meet or beat the performance intervals established by the New York PSC. See Application at 50-52. Moreover, Bell Atlantic argues that it has met its commitment to the NY PSC to improve CLEC order flow through. See Application at 52-53. With respect to repairs, Bell Atlantic asserts that CLEC repairs are conducted in "roughly the same time" as for its own customers, and some cases the performance is better than for its retail customers. See Application at 58-59.

Bell Atlantic's OSS still suffers from two general problems: (1) the inability to flow through orders at an acceptable level, that is, at the requisite level of automation, and (2) an inability to handle commercial volumes of orders. Bell Atlantic's response to the problem is that they are caused by CLEC's mistakes in the ordering process, an acquiescence that Choice One finds unsupported by its experiences.

The second major problem with Bell Atlantic's OSS system is its inability to handle large volumes of orders at once. Bell Atlantic continues to accuse carriers of "batching" orders – that is, grouping large numbers of orders together and transmitting them to Bell Atlantic for processing. By making an issue of "batching," Bell Atlantic seems to admit that its system are not capable of handling the commercial volumes of orders that an OSS system must handle in a fully competitive post-271 market.

F. The Public Interest Standard

Bell Atlantic makes three general assertions in support of its public interest argument: (1) the local market in New York is open and thriving; (2) mechanism are in place to ensure that the market remains open and thriving; and (3) Bell Atlantic's entry into the New York long distance market will enhance competition and consumer welfare in that market.

Bell Atlantic asserts that the local market will remain open by virtue of a number of pro-competitive constructs. First, Bell Atlantic believes that NY PSC and its aggressive regulatory regime will ensure that markets remain open. Second, Bell Atlantic states that it is subject to mandatory and voluntary performance reporting and assurance mechanisms that will help regulate anti-competitive behavior including: reporting requirements in the NY PSC Carrier-to-Carrier proceeding (Case 97-C-00139); NY PSC's OSS standard; Bell Atlantic's Performance Assurance Plan; and Bell Atlantic's Change Control Assurance Plan. In the latter two mechanisms, Bell Atlantic pledges \$269 million in self-executing billing credits to be given to CLECs in the event Bell Atlantic fails to meet certain state-approved performance metrics.

Choice One disputes whether the self-imposed performance assurance plans or their self-executing remedies alone are adequate and will result in the local markets remaining open and thriving. First, where discriminatory activity may lead to financial penalties, those penalties are far below the levels necessary to incent Bell Atlantic to provide non-discriminatory service. When compared to the multi-billion dollar revenue flows that Bell Atlantic will realize from local and long distance revenue streams in New York once Section 271 relief is granted, the \$269 million maximum annual penalty proposed by the Bell Atlantic plans is clearly trivial.

Further, relying on billing credits to "compensate" competitors for failure to meet performance measurements should not be in lieu of other potential remedies (ex., tort actions for

loss of business). Also, billing credits are too little, too late for a CLEC that experiences discrimination. A simple metric system alone allows Bell Atlantic to hide discriminatory practices through a weighting and penalty scheme which is tied to statistics rather than the occurrence of discrimination. Under the Plan, Bell Atlantic will be allowed to offset poor performance in one performance category with good performance in another category. Thus, the availability of the credits is illusory and may hide anti-competitive actions by Bell Atlantic.

CLECs whose business is adversely affected by Bell Atlantic's poor performance may receive no relief, and be forced out of business due to the discriminatory and anti-competitive practice. For example, there may be Choice One customers who are out of service due to Bell Atlantic's premature cutovers (which Bell Atlantic counts "on time"). If Bell Atlantic on an overall basis meets its metric, Choice One receives no relief nor does it have the ability to compensate its customer for the inconvenience. Thus, for a certain percentage of the marketplace, Bell Atlantic is not motivated to provide consistent non-discriminatory service at a service level equivalent to its own. Choice One submits that the Assurance Plan alone is insufficient to ensure that the markets continue to be open to local competition.

Choice One suggests that in addition to well-defined metrics, the FCC adopt an expedited complaint procedure whereby the CLECs may file a simple standardized individual complaint for discriminatory actions that would be processed at the FCC (or in the relevant state commission) in an expedited manner (ex. 30-days). Choice One would propose monetary fines for such actions. For example, a fine of \$50,000 per hour for each hour that a customer is out of service because of a Bell Atlantic premature cutover.

III. Conclusion

Choice One acknowledges the efforts that Bell Atlantic has exerted to initiate the opening the markets in New York for local competition. Certainly, Choice One does not dispute that Bell Atlantic has met a number of Section 271 checklist standards. Nevertheless, it has not met all the standards, and the 271 process is not a “simple majority” proposition. Granting the application without all standards being satisfactorily met will not result in a thriving, open market from being developed. The FCC should reject the application, and encourage Bell Atlantic to re-file once the problems identified by Choice One have been resolved and procedures are implemented and consistently followed.

Respectfully submitted,

CHOICE ONE COMMUNICATIONS, INC.

By: 

Kim Robert Scovill
Vice President, Legal and Regulatory Affairs and
General Counsel

Terry J. Romine
Director, Regulatory Affairs and Associate
General Counsel

Choice One Communications, Inc.
100 Chestnut Street, Suite 700
Rochester, NY 14534
(716) 530-2781
FAX: (716) 530-2734

Date: October 18, 1999